

IC 22-3-4

Chapter 4. Worker's Compensation: Administration and Procedures

IC 22-3-4-1

Industrial board; office space; furniture and supplies; meetings

Sec. 1. The board shall be provided with adequate offices in the capitol or some other suitable building in the city of Indianapolis in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies.

The board or any member thereof may hold sessions at any place within the state as may be deemed necessary.

(Formerly: Acts 1929, c.172, s.54.)

IC 22-3-4-2

Rules; subpoenas; service; hearings

Sec. 2. (a) The worker's compensation board may make rules not inconsistent with IC 22-3-2 through IC 22-3-6 for carrying out the provisions of IC 22-3-2 through IC 22-3-6. Processes and procedures under IC 22-3-2 through IC 22-3-6 shall be as summary and simple as reasonably may be. The board or any member of the board shall have the power for the purpose of IC 22-3-2 through IC 22-3-6 to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(b) The county sheriff shall serve all subpoenas of the board and shall receive the same fees as provided by law for like service in civil actions. Each witness who appears in obedience to such subpoenas of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

(c) The circuit or superior court shall, on application of the board or any member of the board, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

(Formerly: Acts 1929, c.172, s.55.) As amended by P.L.144-1986, SEC.41; P.L.28-1988, SEC.35.

IC 22-3-4-3

Inspection of records; confidential information; destruction of records

Sec. 3. (a) The board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employee, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this chapter, IC 22-3-2 through IC 22-3-3, and IC 22-3-5 through IC 22-3-6. The accident reports and reports of attending physicians shall be the private records of the board, which shall be open to the inspection of the employer, the employee and their legal representatives, but not the

public unless, in the opinion of the board, the public interest shall so require.

(b) In order to prevent the accumulation of unnecessary and useless files of papers, the board may destroy or otherwise dispose of under IC 5-15-5.1-14 all papers that have been on file for more than two (2) years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one (1) year has elapsed since the termination of the compensation period as fixed by such board.

(Formerly: Acts 1929, c.172, s.56.) As amended by Acts 1979, P.L.17, SEC.33; P.L.121-1995, SEC.2.

IC 22-3-4-4

Awards; private agreements; approval

Sec. 4. If after seven (7) days from the date of the injury or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under IC 22-3-2 through IC 22-3-6, a memorandum of the agreement in the form prescribed by the worker's compensation board shall be filed with the board; otherwise such agreement shall be voidable by the employee or his dependent. If approved by the board, thereupon the memorandum shall for all purposes be enforceable by court decree as specified in section 9 of this chapter. Such agreement shall be approved by said board only when the terms conform to the provisions of IC 22-3-2 through IC 22-3-6.

(Formerly: Acts 1929, c.172, s.57.) As amended by P.L.144-1986, SEC.42; P.L.28-1988, SEC.36.

IC 22-3-4-5

Disputes; hearings

Sec. 5. (a) If the employer and the injured employee or the injured employee's dependents disagree in regard to the compensation payable under IC 22-3-2 through IC 22-3-6 or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute.

(b) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the employee, employer, and attorneys of record in the manner prescribed by the board of the time and place of all hearings and requests for continuances. The hearing of all claims for compensation, on account of injuries occurring within the state, shall be held in the county in which the injury occurred, in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board member, may be heard in

any county within the board member's jurisdiction.

(c) All disputes arising under IC 22-3-2 through IC 22-3-6, if not settled by the agreement of the parties interested therein, with the approval of the board, shall be determined by the board.

(Formerly: Acts 1929, c.172, s.58; Acts 1959, c.360, s.1.) As amended by P.L.144-1986, SEC.43; P.L.28-1988, SEC.37; P.L.95-1988, SEC.9; P.L.170-1991, SEC.10.

IC 22-3-4-6

Disputes; summary proceedings

Sec. 6. The board by any or all of its members shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent to each of the employee, employer, and attorney of record in the dispute.

(Formerly: Acts 1929, c.172, s.59.) As amended by P.L.95-1988, SEC.10.

IC 22-3-4-7

Disputes; administrative review

Sec. 7. If an application for review is made to the board within thirty (30) days from the date of the award made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives, and witnesses as soon as practicable and shall make an award and file the same with the finding of the facts on which it is based and send a copy thereof to each of the parties in dispute, in like manner as specified in section 6 of this chapter.

(Formerly: Acts 1929, c.172, s.60; Acts 1969, c.94, s.6.) As amended by P.L.144-1986, SEC.44; P.L.258-1997(ss), SEC.9.

IC 22-3-4-8

Disputes; awards; appeals

Sec. 8. (a) An award of the board by less than all of the members as provided in section 6 of this chapter, if not reviewed as provided in section 7 of this chapter, shall be final and conclusive.

(b) An award by the full board shall be conclusive and binding as to all questions of the fact, but either party to the dispute may, within thirty (30) days from the date of such award, appeal to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

(c) The board of its own motion may certify questions of law to said court of appeals for its decision and determination.

(d) An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

(e) All such appeals and certified questions of law shall be

submitted upon the date filed in the court of appeals, shall be advanced upon the docket of said court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs.

(f) An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(Formerly: Acts 1929, c.172, s.61.) As amended by P.L.144-1986, SEC.45.

IC 22-3-4-9

Contracts; private agreements; appeals

Sec. 9. (a) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the injury occurred a certified copy of the memorandum of agreement approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

(b) Any such judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals shall be modified to conform to any decision of the worker's compensation board ending, diminishing, or increasing any weekly payment under the provisions of IC 22-3-3-27 upon the presentation to it of a certified copy of such decision.

(Formerly: Acts 1929, c.172, s.62; Acts 1947, c.162, s.13.) As amended by P.L.144-1986, SEC.46; P.L.28-1988, SEC.38.

IC 22-3-4-10

Actions and proceedings; costs

Sec. 10. In all proceedings before the worker's compensation board or in a court under IC 22-3-2 through IC 22-3-6, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

(Formerly: Acts 1929, c.172, s.63.) As amended by P.L.144-1986, SEC.47; P.L.28-1988, SEC.39.

IC 22-3-4-11

Medical examination; physician or surgeon

Sec. 11. The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Said physician or surgeon shall be allowed traveling

expenses and a reasonable fee to be fixed by the board.

The fees and expenses of such physician or surgeon shall be paid by the state only on special order of the board or a member thereof. *(Formerly: Acts 1929, c.172, s.64; Acts 1963, c.387, s.14.)*

IC 22-3-4-12

Rates and charges; attorney's fees; payment

Sec. 12. Except as provided in section 12.1 of this chapter, the fees of attorneys and physicians and charges of nurses and hospitals for services under IC 22-3-2 through IC 22-3-6 shall be subject to the approval of the industrial board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the industrial board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fees. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney out of the award the fee so fixed, and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award; provided, that whenever the industrial board shall determine upon hearing of a claim that the employer has acted in bad faith in adjusting and settling said award, or whenever the industrial board shall determine upon hearing of a claim that the employer has not pursued the settlement of said claim with diligence, then the board shall, if compensation be awarded, fix the amount of the claimant's attorney's fees and such attorney fees shall be paid to the attorney and shall not be charged against the award to the claimant.

(Formerly: Acts 1929, c.172, s.65; Acts 1965, c.217, s.3.) As amended by P.L.144-1986, SEC.48; P.L.258-1997(ss), SEC.10.

IC 22-3-4-12.1

Bad faith in adjusting or settling claim for compensation; awards; attorney's fees

Sec. 12.1. (a) The worker's compensation board, upon hearing a claim for benefits, has the exclusive jurisdiction to determine whether the employer, the employer's worker's compensation administrator, or the worker's compensation insurance carrier has acted with a lack of diligence, in bad faith, or has committed an independent tort in adjusting or settling the claim for compensation.

(b) If lack of diligence, bad faith, or an independent tort is proven under subsection (a), the award to the claimant shall be at least five hundred dollars (\$500), but not more than twenty thousand dollars (\$20,000), depending upon the degree of culpability and the actual damages sustained.

(c) An award under this section shall be paid by the employer, worker's compensation administrator, or worker's compensation insurance carrier responsible to the claimant for the lack of diligence, bad faith, or independent tort.

(d) The worker's compensation board shall fix in addition to any award under this section the amount of attorney's fees payable with respect to an award made under this section. The attorney's fees may

not exceed thirty-three and one-third percent (33 1/3%) of the amount of the award.

(e) If the worker's compensation board makes an award under this section, it shall reduce the award to writing and forward a copy to the department of insurance for review under IC 27-4-1-4.5.

(f) An award or awards to a claimant pursuant to subsection (b) shall not total more than twenty thousand dollars (\$20,000) during the life of the claim for benefits arising from an accidental injury.

As added by P.L.258-1997(ss), SEC.11. Amended by P.L.31-2000, SEC.5.

IC 22-3-4-13

Reports of injuries and deaths; violations of article

Sec. 13. (a) Every employer shall keep a record of all injuries, fatal or otherwise, received by or claimed to have been received by his employees in the course of their employment. Within seven (7) days after the occurrence and knowledge thereof, as provided in IC 22-3-3-1, of any injury to an employee causing his death or his absence from work for more than one (1) day, a report thereof shall be made in writing and mailed to the employer's insurance carrier or, if the employer is self insured, delivered to the worker's compensation board in the manner provided in subsections (b) and (c). The insurance carrier shall deliver the report to the worker's compensation board in the manner provided in subsections (b) and (c) not later than seven (7) days after receipt of the report or fourteen (14) days after the employer's knowledge of the injury, whichever is later. An employer or insurance carrier that fails to comply with this subsection is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board. Civil penalties collected under this section shall be deposited in the state general fund.

(b) All insurance carriers, companies who carry risk without insurance, and third party administrators reporting accident information to the board in compliance with subsection (a) shall:

(1) report the information using electronic data interchange standards prescribed by the board no later than June 30, 1999; or

(2) in the alternative, the reporting entity shall have an implementation plan approved by the board no later than June 30, 2000, that provides for the ability to report the information using electronic data interchange standards prescribed by the board no later than December 31, 2000.

Prior to the June 30, 2000, and December 31, 2000, deadlines, the reporting entity may continue to report accidents to the board by mail in compliance with subsection (a).

(c) The report shall contain the name, nature, and location of the business of the employer, the name, age, sex, wages, occupation of the injured employee, the date and hour of the accident causing the alleged injury, the nature and cause of the injury, and such other information as may be required by the board.

(d) A person who violates any provision of this article, except

IC 22-3-5-1 or IC 22-3-7-34(a) or IC 22-3-7-34(b), commits a Class C infraction. A person who violates IC 22-3-5-1 or IC 22-3-7-34(a) or IC 22-3-7-34(b) commits a Class A infraction. The worker's compensation board in the name of the state may seek relief from any court of competent jurisdiction to enjoin any violation of this article.

(e) The venue of all criminal actions under this section lies in the county in which the employee was injured. The prosecuting attorney of the county shall prosecute all such violations upon written request of the worker's compensation board. Such violations shall be prosecuted in the name of the state.

(f) In an action before the board against an employer who at the time of the injury to or occupational disease of an employee had failed to comply with IC 22-3-5-1 or IC 22-3-7-34(a) or IC 22-3-7-34(b), the board may award to the employee or the dependents of a deceased employee:

- (1) compensation not to exceed double the compensation provided by this article;
- (2) medical expenses; and
- (3) reasonable attorney fees in addition to the compensation and medical expenses.

(g) In an action under subsection (c) the court may:

- (1) order the employer to cease doing business in Indiana until the employer furnishes proof of insurance as required by IC 22-3-5-1 and IC 22-3-7-34(a) or IC 22-3-7-34(b);
- (2) require satisfactory proof of the employer's financial ability to pay any compensation or medical expenses in the amount and manner and when due as provided for in IC 22-3, for any injuries which occurred during any period of noncompliance; and
- (3) require the employer to deposit with the worker's compensation board an acceptable security, indemnity, or bond to secure the payment of such compensation and medical expense liabilities.

(h) The penalty provisions of subsection (e) shall apply only to the employer and shall not apply for a failure to exact a certificate of insurance under IC 22-3-2-14 or IC 22-3-7-34(i) or IC 22-3-7-34(j). *(Formerly: Acts 1929, c.172, s.66; Acts 1937, c.214, s.5; Acts 1943, c.136, s.6.) As amended by Acts 1978, P.L.2, SEC.2210; Acts 1982, P.L.135, SEC.1; P.L.145-1986, SEC.1; P.L.28-1988, SEC.40; P.L.170-1991, SEC.11; P.L.75-1993, SEC.3; P.L.1-1994, SEC.108; P.L.235-1999, SEC.4.*

IC 22-3-4-14

Awards; termination; reports

Sec. 14. Every employer paying compensation directly without insurance and every insurance carrier paying compensation in behalf of an employer shall, within ten (10) days from the termination of the compensation period fixed in any award against him or its insured, for an injury or death, either by the approval of an agreement or upon hearing, and within ten (10) days from the full redemption of any

such award by the cash payment thereof in a lump sum as provided in IC 22-3-2 through IC 22-3-6, make such report or reports as the worker's compensation board may require.

(Formerly: Acts 1929, c.172, s.67.) As amended by P.L.144-1986, SEC.49; P.L.28-1988, SEC.41.